

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2578 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARENDRAKUMAR BABABHAI SENMA (RAVAT)

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI, Advocate for the Petitioner.

MR.U.R.BHATT, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 02/07/96

ORAL JUDGEMENT

Petitioner Narendrakumar Bababhai Senma (hereinafter referred to as "the detenu"), by way of this petition under Article 226 of the Constitution of India, has challenged the order of detention dated 41-1996 passed by the Commissioner of Police, Ahmedabad City, (hereinafter referred to as "the detaining authority")

under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as " the PASA Act").

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on four cases for having committed offences under the Indian Penal Code and under section 135 (1) of the Bombay Police Act. Two out of the said four cases are pending in the Court while investigation is in progress with respect to the remaining two cases. Beside these criminal case, the detaining authority has also placed reliance on the statements of four witnesses for the alleged incidents of 14-12-1995 and 9-12-1995 wherein it is alleged that the detenu is extorting monies from the innocent citizens at the point of knife. Considering these materials, the detaining authority was of the view that the detenu is a "dangerous person " within the meaning of section 2 (c) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

Since this petition is capable of being disposed of on the first contention advanced on behalf of the detenu regarding non-consideration of the representation by the concerned authority addressed on behalf of the detenu , it is not necessary to deal with the other contentions raised in the petition. It is averred in the petition that the father of the detenu sent a representation dated 30-1-1996, Annexure "D", to the Home Minister of the State of Gujarat by registered post A/D. The Chief Minister was in charge of the Home Department. The said representation was posted on 2nd February, 1996. The acknowledgement receipt was received back by the father of the detenu on 9-2-1996 bearing the rubber stamp and the signature of the person who received the same in the office of the Chief Minister, meaning thereby the representation was received by the office of the Chief Minister on any day between 2-2-96 and 9-2-96. It is the grievance of the petitioner that still the said representation has not been considered by the Chief Minister and even if the same is considered, the petitioner, or for that matter the father of the detenu, has not been informed about the same since none has received any communication in that behalf till date. Now, this averment made in the petition has not been disputed by the respondents by filing counter reply.

Under the circumstances, the averments made in the petition have gone uncontroverted and therefore they are required to be accepted. In view of this, by not considering the representation made on behalf of the detenu, his fundamental rights guaranteed under Article 22 (5) of the Constitution of India have been violated and consequently therefore the continued detention of the detenu is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 4-1-1996 is quashed and set aside. The detenu Narendrakumar Bababhai Senma (Ravat) is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

oooooo

True copy